

Peter A. Romero (PR-1658)
FRANK & ASSOCIATES, P.C.
500 Bi-County Blvd., 112N
Farmingdale, New York 11735
Tel. (631) 756-0400
Fax (631) 756-0547
promero@laborlaws.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOSE MANUEL HENRIQUEZ and JOSE
HECTOR FUENTES, on behalf of themselves and
similarly situated employees,

Plaintiffs,

-against-

KELCO LANDSCAPING INC., KELCO
LANDSCAPING CORP., ELM GENERAL
CONSTRUCTION CORP., KELLY'S CREW,
JOHN KELLY, JOSEPH PROVENZANO,

Defendants.
-----X

Plaintiffs, JOSE MANUEL HENRIQUEZ and JOSE HECTOR FUENTES by and
through their attorneys, Frank & Associates, P.C., complaining of the Defendant KELCO
LANDSCAPING CORP., respectfully alleges as follows:

NATURE OF THE CLAIM

1. This action is brought on behalf of plaintiffs and a putative class of
individuals who performed work as landscape laborers for Defendants KELCO
LANDSCAPING INC. and/or other related entities affiliated or controlled by KELCO
(collectively referred to hereinafter as "KELCO"), one of the largest landscape

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LONG ISLAND OFFICE

CV 12 6233

SPATT, J.

BROWN, M. J.

**COLLECTIVE AND
CLASS ACTION
COMPLAINT**

Jury Trial Demanded

York Labor Law to workers, and KELCO acted as a contractor or sub-contractor on one or more of such contracts.

52. Throughout their employment with KELCO plaintiffs worked on prevailing wage projects but were not paid the prevailing wage rate, were misclassified and/or were paid less than what the wage schedules required.

53. KELCO had a duty to pay the employees working on those public works projects according to the terms delineated in the contract and failed to pay its employees according to the specified terms.

54. Upon information and belief, KELCO entered into a number of public works contracts which called for KELCO to perform landscape construction work at various locations in New York (the "Public Works Contracts").

55. The Public Works Contracts included but are not limited to projects upon which KELCO performed work at Brooklyn Bridge Park, Hudson River Park, Central Park, High Line, Washington Square Park, Hanover Square Park, Brooklyn Botanical Gardens, Fulton Ferry, United Nations, Lincoln Center, Museum of Modern Art, Bryant Park, Metropolitan Museum of Art and Citifield.

56. Article I, Section 17 of the New York Constitution and Section 220 of the New York Labor Law provide that the wages to be paid to laborers, workman and mechanics upon public work shall not be less than the "prevailing rate of wages."

57. The prevailing rate of wage is the rate of wage paid in the locality by virtue of the collective bargaining agreements between bona fide labor organizations and employers of the private sector.